

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-1339

B
P/S

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 75-1339

UNITED STATES OF AMERICA

APPELLEE

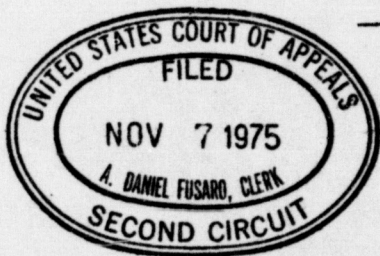
V.

JAMES PURCELL OLIVER

APPELLANT

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

APPENDIX FOR APPELLANT



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2. EMMET CLARK.

H 74 / 174

[illegible]

DATE
1974

11/15	The Grand Jury at Hartford returned a True Bill of indictment charging violation of 26 USC 5861(d), 5845(a) & 5871 in ct. 1 - did knowingly possess a firearm, "molotov cocktail" which had not been registered to him in the National Firearms Registration and Transfer Record; and 18 USC 644(e) in cts. 2 and 3 - by means and use of an instrument of commerce, that is, a telephone, wilfully did make a threat to kill, injure or intimidate by means of an explosive. Summons to issue. (Clarie, J.) m-11/18/74
11/18	Summons issued in duplicate and with certified copy of the indictment handed US Marshal for service.
11/25	Marshal's Executed Return Filed. (Summons).
12/9	PIEA of not guilty entered to three counts. Two weeks for motions. Govt. has one week to respond. (Clarie, J.) m-12/10/74
12/30	NOTICE OF READINESS FILED BY GOVERNMENT.

1975

$$\frac{1}{3}$$

Court Reporter's Notes of Proceedings held on December 9, 1974, filed in Hartford. (Sperber, R.)

App. 1

DATE
1975

PROCEEDINGS

1/16	Court Reporter's Sound Recording of Proceedings held on December 9, 1974, filed in Hartford. (Sperber, R.)
5/1	Magistrate's Papers filed. (Parker, Mag.) Record of Proceedings in Criminal Cases, Executed Magistrate's Warrant of Arrest, Complaint and Affidavit.
6/16	Call of Jury Assignment List Cal.- Case #3 for Jury selection on June 19th. (Clarie, J.)
6/19	JURY TRIAL - Attys. Sturtevant & Smith file Voir Dire Questions - Atty. Sturtevant filed Motion To Disqualify Certain Vernireman For Cause, Motion Granted - 48 Jurors answer roll call - Voir Dire Oath Administered 12 Jurors impanelled and sworn - Case to commence today after 2 other juries are selected ----JURY TRIAL COMMENCES - 5 Govt. Witnesses sworn and testified - Govt. exhibit #1 marked for identification - Govt. exhibits 2 & 3, filed - Court adjourned at 4:35pm until tomorrow at 10:00 am. (Clarie, J.)
6/20	JURY TRIAL CONTINUES: Jury of 12 report - Govt's. Request To Charge, filed - Deft's. Request to Charge, filed.- 2 Govt. witnesses sworn and testified - Govt. exhibit 1-A, filed - Govt. rests at 10:38am - Defendant's witness sworn and testified - Defense rests at 10:45am - Summations from 10:46am to 11:23am - Govt. rebuttal from 11:24am to 11:29am - Court charges from 11:45am to 12:16pm - Atty. Sturtevant states exceptions to charge - Charge to stand - Indictment and exhibits given to jury at 12:18pm - Jury recalled to Courtroom at 1:00pm after sending a note to Judge Clarie requesting reading of testimony of a witness - Jury retires at 1:33pm and returned with verdict of GUILTY ON ALL 3 COUNTS at 3:07pm - Jury polled at request of Atty. Sturtevant - Verdict of guilty ordered accepted and filed. Bond of \$10,000.00 with full surety. (Clarie, J.)
7/16	CJA 20 executed (Clarie, J.) authorizing preparation of transcript. filed.
8/20	Court Reporter's Notes of Proceedings held on June 19 and 20, 1975, filed in Hartford. (Sperber, R.)
9/5	CJA 21 executed (Clarie, J.) and mailed to A.O. for payment.
9/4	Court Reporter's transcript of proceedings held on June 19 and 20, 1975, filed in Hartford. (Sperber, R.)
9/15	DISPOSITION- 3 counts - 5 years imprisonment on each of three counts to run concurrently. Appeal rights explained. (Clarie, J.)
9/17	Judgment and Commitment Order, filed. (Clarie, J.) m-9/19/75 Two attested copies handed US Marshal and attested copy handed US Probation Officer in Hartford.
9/17	Notice of Appeal Filed.
9/22	Certified Copy of Notice of Appeal and Docket Entries mailed U.S. Court of Appeals.
9/25	Transcript of Proceedings held on December 9, 1974, filed in Hartford. (Sperber, R.)

App 2

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

U.S. DISTRICT COURT
HARTFORD, CONN.

Nov 15 3 25 PM '74

FILED

UNITED STATES OF AMERICA

v.

JAMES PURCELL OLIVER

:

:

:

CRIMINAL NO. 84-74-174

I N D I C T M E N T

The Grand Jury charges:

COUNT ONE

On or about the 15th day of July, 1974, in the District of Connecticut, the defendant, JAMES PURCELL OLIVER, did knowingly possess a firearm, that is, a destructive device known as a "molotov cocktail," which had not been registered to him in the National Firearms Registration and Transfer Record, in violation of Title 26, United States Code, Sections 5861(d), 5845(a) and 5871.

COUNT TWO

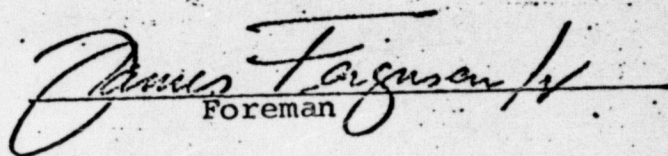
On or about the 15th day of July, 1974, in the District of Connecticut, the defendant, JAMES PURCELL OLIVER, by means and use of an instrument of commerce, that is, a telephone, wilfully did make a threat to kill, injure or intimidate Lillie M. Jenkins by means of an explosive, the said threat being substantially as follows: that shortly after an unsuccessful firebombing of the home of Lillie M. Jenkins, the said JAMES PURCELL OLIVER did, by means of a telephone, call the home of Lillie M. Jenkins and state, "The next time I won't miss," in violation of Title 18, United States Code, Section 644(e).

App 3

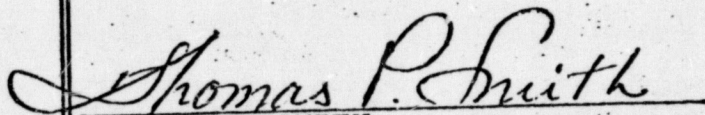
COUNT THREE

On or about the 15th day of July, 1974, in the District of Connecticut, the defendant, JAMES PURCELL OLIVER, by means and use of an instrument of interstate commerce, that is, a telephone, wilfully did make a threat to unlawfully damage and destroy a building, that is, a residential dwelling located at 20 Capen Street, Hartford, Connecticut, by means of an explosive, the said threat being substantially as follows: that shortly after an unsuccessful firebombing of said dwelling, JAMES PURCELL OLIVER did, by means of a telephone, call the occupants of that dwelling and state, "The next time I won't miss," in violation of Title 18, United States Code, Section 644(e).

A TRUE BILL.


Foreman

PETER C. DORSEY
United States Attorney


THOMAS P. SMITH
Assistant United States Attorney

APP 4

1 MR. SMITH: United States versus James Purcell
2 Oliver, 74-174.

3 MR. STURTEVANT: This will be a not guilty plea,
4 and we also waive the reading of the indictment.

5 THE COURT: Put the defendant to plea, Madam Clerk.

6 THE CLERK: James Purcell Oliver, you are charged
7 with violation of Title 26, United States Code, Section 5861(d),
8 5845(a) and 5871, and 644(e), and that is in three counts of
9 the indictment.

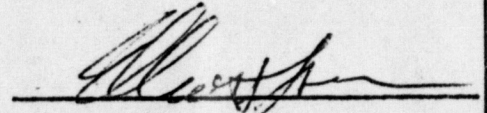
10 How do you plead?

11 THE DEFENDANT: Not guilty.

12 THE COURT: The same rule prevails: two weeks to
13 file any motions addressed to the indictment.
14

15 - - - - -

16
17
18 I hereby certify that the foregoing is a true
19 and correct transcript of my stenographic notes
20 of the proceedings in the above-entitled
21 cause on December 9, 1974.
22
23
24
25



1 convenience, if it wants to look at it, photocopies
2 of the Jencks material that I turned over.

3 would Do you want this as a Court Exhibit?

4 until THE COURT: It isn't necessary.

5 object MR. SMITH: One other thing I would like to
6 note: There is a typographical error in the
7 indictment, in Counts 2 and 3. The typographical
8 error is this: The indictment refers to Title 18
9 United States Code, Section 644(e). Actually,
10 that should be 844(e).

11 object MR. STURTEVANT: Many months ago -- not many
12 months ago, but early in the case, Mr. Smith
13 brought this to my attention. And once he made
14 the case an open file case, and I reviewed this,
15 I felt that there was nothing to be served by me
16 filing a motion to have the Government reindict.
17 Because I felt it was sufficient. Obviously, it
18 was a typographical --

19 THE COURT: The correct title should be what?

20 MR. STURTEVANT: 844.

21 THE COURT: Very well.

22 MR. STURTEVANT: Now, your Honor, it seems to
23 me one of the other evidentiary issues that is
24 going to come up, I believe Mr. Smith is going to
25 attempt to introduce some prior or similar acts,

App. 6

1 L I L L Y M . J E N K I N S , appearing as a witness,
2 being duly sworn, testified as follows:

3 THE CLERK: Would you state your full name?

4 THE WITNESS: Lilly Mae Jenkins.

5 THE CLERK: And your address?

6 THE WITNESS: 20 Capen Street.

7 THE CLERK: Hartford?

8 THE WITNESS: Yes.

9 DIRECT EXAMINATION BY MR. SMITH:

10 Q Miss Jenkins, are you employed?

11 A Yes, I am.

12 Q Would you tell the ladies and gentlemen of the
13 jury how you are employed, and remember to keep your voice
14 up so that they can all hear you.

15 A Okay. I am employed by the Department of
16 Community Affairs.

17 Q And where is that, Miss Jenkins?

18 A 1179 Main Street, in Hartford.

19 Q What do you do at the Department of Community
20 Affairs?

21 A I'm an affirmative action liaison.

22 MR. STURTEVANT: Your Honor --

23 THE COURT: If any member of the jury can't
24 hear this young lady, just raise your hand.

25 Suppose we read back, as far as we have been.

App 7

1 Because, unless the last gentleman down there
2 can hear everything you say, your testimony
3 doesn't serve the purpose that you intend.

4 So I will have it read back up to this point,
5 to make sure it is heard up to this point.

6 And then please speak out slowly and as though
7 you were angry. Sometimes when you get angry
8 at somebody you speak louder, don't you?

9 So speak out good and loud.

10 All right, read it back, please.

11 (Previous testimony read back.)

12 BY MR. SMITH:

13 Q What exactly does that entail, Miss Jenkins?

14 A Working in the personnel office, writing up
15 things for minorities, in order to help them find better
16 jobs, and handle all discriminatory complaints.

17 Q Now, do you have any other type of employment?

18 A I am a member of the United States Army Reserve.

19 Q And what rank are you?

20 A Specialist 5.

21 Q That is the same as Sergeant, isn't it?

22 A Yes, it is.

23 Q Now, you have still another job?

24 A At the time I was employed by H. B. Davis Dis-
25 tributors.

App 8

1 Q And what did you do there?

2 A I was a salesgirl.

3 Q And that was your third job?

4 A Yes, it was.

5 MR. STURTEVANT: Are we talking about now,
6 your Honor? I don't think it is clear as to when
7 this other job was.

8 BY MR. SMITH:

9 Q Are you presently employed by H. B. Davis?

10 A No, they went out of business.

11 Q When did you cease being employed by H. B. Davis
12 on a part-time basis?

13 A December 23rd, 1974.

14 Q And when did you start working for them?

15 A September of 1973.

16 Q So you worked from September until December, for
17 H. B. Davis, as a salesgirl, which was your third job?

18 A Yes, it was.

19 Q Thank you.

20 Do you know James Purcell Oliver?

21 A Yes, I do.

22 Q Do you see him in court here today?

23 A Yes, I do.

24 Q Could you point him out to the ladies and gentlemen
25 of the jury?

1 A He's sitting over there, at that table.

2 Q How long --

3 THE COURT: Excuse me. There are three
4 gentlemen sitting at the table. Which one?

5 THE WITNESS: The black one.

6 MR. STURTEVANT: Your Honor, we will concede
7 that she identified him.

8 THE COURT: Very well.

9 BY MR. SMITH:

10 Q How long have you known James Oliver?

11 A Seven years, closely.

12 Q Did you date James Oliver at one time?

13 A Yes, I did.

14 Q And how long did you date him?

15 A For about three years.

16 Q When did your relationship with James Oliver end?

17 A April 1st, 1974.

18 Q And who terminated the relationship, you or he?

19 A I did.

20 Q During the time that you went out with James
21 Oliver, and dated him, did he give you any presents?

22 A Yes, he did.

23 Q Did he ever give you a television set?

24 A Yes, he did.

25 Q Do you still have that television set?

APP 10

1 A No, I don't.

2 Q Can you tell the ladies and gentlemen of the jury
3 the circumstances under which you parted with that television
4 set, but --

5 MR. STURTEVANT: Your Honor, I object. I
6 don't understand the relevance of this.

7 MR. SMITH: Your Honor, I promise to show
8 the relevance.

9 THE COURT: Is that part of the controversy
10 here?

11 MR. SMITH: Yes, your Honor, I believe it is.
12 I believe it is part of the logical sequence of
13 events necessary for the jury to understand what
14 is going on.

15 THE COURT: Well, on that representation,
16 the Court will allow it.

17 MR. STURTEVANT: If it please the Court, I
18 would first request that we get some time
19 sequence. I don't even seem to know what time
20 sequence we are talking about.

21 MR. SMITH: I was about to ask that. I said
22 "But", and Mr. Sturtevant objected.

23 Let me rephrase the question. I will with-
24 draw the question I just asked.

25

App. 11

1 BY MR. SMITH:

2 Q James Purcell Oliver gave you a television set,
3 correct?

4 A Yes, he did.

5 Q When did you part with that television set?

6 A On the evening of July 14, 1974.

7 Q Do you remember about what time it was?

8 A About 8:30 p.m.

9 Q Will you tell the ladies and gentlemen of the
10 jury, loudly, as loudly as you can, so everybody can hear,
11 just the circumstances that took place surrounding your
12 giving away of this television set; your giving it back to
13 James Oliver?

14 A James came over to my house and he asked me for
15 the television set. And at the time I refused to give it
16 to him. And then there was some discussion, arguing about
17 the television set.

18 And my mother told me to give him back the set.
19 So I brought the television downstairs and gave it to him.

20 Q What did he do with the TV set when he got it
21 from you?

22 A He smashed it in the street.

23 Q Did he say anything to you?

24 A He started hollering and swearing, and about how
25 he was going to get me, and walked away.

App 12

1 Q He threatened you?

2 A Yes.

3 Q So he walked away after this episode?

4 A Yes, he walked up the street, hollering and
5 screaming.

6 Q Did you see him again that night?

7 A Yes, about ten p.m.

8 Q Tell the ladies and gentlemen of the jury just
9 what the circumstances were surrounding your seeing him at
10 ten a.m. -- rather, ten in the evening?

11 A He was walking down --

12 THE COURT: Excuse me. Is this ten p.m.?

13 MR. SMITH: Ten in the evening, your Honor.

14 THE COURT: In the evening.

15 A He came by the house with two bottles in his hand,
16 and he said he was going to burn the house down.

17 Q Where were you when you saw him, and when you
18 heard him say this? Where physically were you located?

19 A On the second floor porch, looking down.

20 Q About how far away were you from James Oliver when
21 he said this?

22 A About where you are standing now.

23 Q It is ten o'clock at night, though, correct?

24 A Right.

25 Q Could you see him clearly?

App 13

1 A Yes.

2 Q Are you absolutely positive it was James Oliver?

3 A I'm absolutely positive and sure it was him.

4 Q Did you call the police when he said this?

5 A No.

6 Q Why not?

7 A Because he's always hollering and screaming.

8 I didn't pay him any attention.

9 Q What time did you go to bed that evening?

10 A About midnight.

11 Q Now, did anything happen between ten and twelve
12 o'clock, the time you saw James and the time you went to
13 bed?

14 A I had a series of phone calls by him. He was re-
15 questing to talk to me, to talk to me, talk to me. But I
16 wouldn't answer the phone.

17 Q Now, did he threaten you during any of these phone
18 calls? Did you ever speak to him during these --

19 A No, I didn't speak to him during the series.

20 Q Now you say you went to sleep at midnight, correct?

21 A Correct.

22 Q Did you sleep soundly that night?

23 A Yes, I did.

24 Q Did you sleep completely through the night?

25 A No, about ten of two I woke up from a crash coming

App 14

1 through my window. I jumped up and looked out the window
2 and I could see him running toward Main Street. And I saw
3 gasoline all outside my window, and a lot of broken glass
4 under the window.

5 Q When you say you saw him running up towards Main
6 Street, who do you mean?

7 A James Oliver.

8 Q Who was home with you at that time? Was anybody
9 home with you?

10 A Yes, my parents and my brother and sister.

11 Q What is your brother's name?

12 A Steven Marshall.

13 Q So your testimony is you heard something coming
14 to your window, a crash, and did you smell anything?

15 A Gasoline.

16 Q What did you do as soon as you heard this crash
17 and smelled it?

18 A I jumped up and looked out the window. And I
19 could see a reflection of James running down the street.
20 So I ran out the room and went to the kitchen window, where
21 I could get a better view. And I see him running across
22 the street to the playground. Then I called the police.

23 Q Now, before you left your bedroom and went to
24 the kitchen, did you look out, as best you could, the window,
25 the kitchen window? The bedroom window, excuse me, looking

1 down towards the ground?

2 A Yes, I did.

3 Q Were you able to see anything around on the ground?

4 A Just glass.

5 Q Did anything actually come through the window into
6 your house?

7 A Only gasoline.

8 Q Okay. Did any object, any foreign object, actually
9 enter the room, other than gasoline?

10 A No.

11 Q Do you know why not?

12 A Because we have a screen in the window, which
13 if anything was to hit on it, on the screen, it would
14 bounce it off.

15 Q Now, you say you went from the bedroom to the
16 kitchen, in your apartment?

17 A Right.

18 Q Is that correct?

19 A Yes.

20 Q Is the kitchen on the same or the opposite side
21 of the apartment that your bedroom is on?

22 A It is on the opposite side.

23 Q And your kitchen overlooks what area?

24 A Main Street.

25 Q Now, looking out your kitchen window, is there a

App 16

1 building right beside --

2 MR. STURTEVANT: Your Honor, counsel has
3 been leading. Let her say what is out there. I
4 respectfully request that he not ask, naming
5 what might be there. Let her say what is there.

6 BY MR. SMITH:

7 Q What is there? Tell the ladies and gentlemen of
8 the jury exactly what it is there?

9 A Nothing. It is an open, vacant lot, which gives
10 you a clear view all the way over to Bellevue Street, and
11 you can see the entire playground.

12 Q Are there any lights?

13 A There is a bright light which shines all night
14 long on the basketball court. And you can see anything and
15 anybody over there.

16 Q When you looked out the kitchen window, did you
17 see anybody?

18 A I saw James Oliver going down by the light and
19 looking around to see if anybody was behind him.

20 Q Was anybody with you looking out that window?

21 A Yes, my mother.

22 Q How long was it after this crash in your bedroom
23 window that you looked out through the kitchen and you saw
24 James Oliver?

25 A About 15 seconds.

App 17

1 Q Did you see anybody else?

2 A No, it was empty.

3 Q Are you absolutely certain, positive, that it
4 was James Oliver you saw?

5 A Yes, I am.

6 Q What did you do then?

7 A I called the police.

8 Q Did the police finally come?

9 A Very shortly.

10 Q Do you remember the name of the officer who
11 responded?

12 A Officer McQueeney.

13 Q What did she do when she got there?

14 A She was taking down the report, and then the
15 telephone rang. And I picked up the telephone, and it was
16 James Oliver. And he said to me "I'll get you; I missed
17 you this time, but I'll get you the next."

18 Q Are you absolutely certain it was James Oliver
19 on that phone?

20 A Sure I am.

21 Q Tell the ladies and gentlemen just how it is that
22 you know it was James Oliver?

23 A I've spoken to him many a times on the telephone,
24 and I lived with him for awhile, so I know his voice very
25 well.

App 18

1 Q Now, when he called you, did he specifically state
2 your name?

3 A Yes, he did.

4 Q What is the name he stated?

5 A "Cookie".

6 Q Is that the name you go by, or a nickname?

7 A Yes, it is.

8 MR. STURTEVANT: I couldn't hear it, your
9 Honor. I'm sorry.

10 THE COURT: The name is "Cookie".

11 BY MR. SMITH:

12 Q How many phones do you have in your apartment?

13 A Three.

14 Q Three phones? They are all in the same number?

15 A Yes, they are.

16 Q Now, you said you were listening in on one phone,
17 correct?

18 A Right.

19 Q Was anybody else listening on any other phones?

20 A Officer McQueeney was on the phone in my bedroom,
21 and my mother was on the phone in the kitchen.

22 Q Did they have your permission to listen in on
23 this conversation?

24 A Yes, they did.

25 Q Okay. So what happened then? What happened

App 19

1 during this conversation?

2 A He just threatened me. He just said he might
3 have missed me this time, but he'll get me the next.

4 Q Okay. Then what happened?

5 A Then he hung up.

6 Q And do you know if he called again that evening?

7 A I know that the phone rang, but I didn't answer
8 it.

9 Q Do you know if your mother has spoken on the
10 phone to James Oliver?

11 A Many of times.

12 Q Do you know if your brother has also spoken to
13 him on the phone?

14 A Yes, he had.

15 Q After this, after this incident of July 15th, did
16 James Purcell Oliver continue to call you?

17 A Yes, he did.

18 Q Did he say why he was calling you?

19 A He called and he tried to tell me that he wanted
20 to talk to me about not testifying, not pressing charges,
21 because he wasn't responsible. And I told him I didn't
22 have anything to talk about.

23 Q About how many times did he call you and try to
24 get you not to testify?

25 A Oh, quite a number of times.

App 20

1 Q Did he ever tell you what he would do, if anything,
2 if you did testify?

3 MR. STURTEVANT: Your Honor, that's a leading
4 question. Have her relate what he told her.

5 BY MR. SMITH:

6 Q Relate exactly what he told you.

7 A He called me up and told me that if I testified,
8 that he'd get me; he'd get me no matter what.

9 Q Was anybody ever present when you received one of
10 these phone calls?

11 A When he called me at work, my boss was there.

12 Q What is your boss's name?

13 A Fred R. Balko.

14 Q Did you ever give Mr. Balko permission to listen
15 in on one of these phone calls?

16 A Yes, I did.

17 Q Did he ever visit you at work?

18 A Yes, he did, a number of times.

19 Q Did he tell you for what purpose?

20 A To talk to me about this case.

21 MR. SMITH: Can I approach the Bench?

22 (The following transpired at the Bench):

23 MR. SMITH: One of the subsequent acts that
24 I plan to bring in at this point is that on
25 August 12, 1974, shortly after this incident,

1 James Oliver came to Miss Jenkins' place of
2 employment, and hit her in the face, in the
3 elevator.

4 I don't plan to bring out the fact that he
5 was arrested, and you know, brought to trial on
6 anything locally, on any charges, but I think
7 it clearly indicates consciousness of guilt.

8 THE COURT: Is there anything related to the
9 hitting that pertains to the conversation between
10 them concerning this particular incident?

11 MR. STURTEVANT: Your Honor, I read the
12 transcript provided to me by Mr. Smith, of the
13 trial. My client was convicted of the misdemeanor
14 of assault. Miss Jenkins relates that basically
15 what he was saying to her in the elevator, before
16 he hit her, is that he just wanted to talk to her.

17 And it is my feeling that we are kind of
18 putting the client's character in issue, when he
19 hasn't testified. And the Government seems to have
20 no other evidence right now to carry forward with
21 this case. And it is just too prejudicial.

22 I think the prejudicial value is outweighed
23 and I respectfully request -- and also, because
24 it is subsequent, your know, and it doesn't
25 involve the phone calls, nor does it involve the

App 22

1 fire bombing. And I would request the Court not
2 allow it to come in.

3 THE COURT: Only if the Government can show
4 that there was conversation concerning this inci-
5 dent, or a threatening conversation relating to
6 her testifying concerning this incident, would
7 the Court permit it to come in.

8 Is there any evidence of that of any kind?

9 MR. SMITH: Your Honor, I believe she just
10 testified that frequently after this incident,
11 he called her up and said "I don't want you to
12 testify. I'm going to get -- if you do, I will
13 get you."

14 On August 12th, at least to my knowledge,
15 there is no evidence that I am aware of that on
16 August 12th, he specifically told her that he
17 didn't want her to testify. But, he did say
18 "I want to talk to you. I want to talk to you."

19 And this is consistently what he said all the
20 way through.

21 And she has indicated to the Court why James
22 Purcell Oliver wanted to talk to her.

23 THE COURT: It might contaminate the record.

24 The Court will sustain the objection.

25 (The following transpired in open court):

1 MR. SMITH: I have nothing further.

2 THE COURT: Counsel, you may proceed.

3 CROSS-EXAMINATION BY MR. STURTEVANT:

4 Q Good afternoon, Miss Jenkins.

5 A Good afternoon.

6 Q You stated in answer to some questions asked by
7 Mr. Smith, that you dated the Defendant, Mr. Oliver.

8 During what period of time was this that you dated
9 him?

10 A From 1971, until 1974.

11 Q And sometime in 1974, you terminated the relation-
12 ship?

13 A On April 1st.

14 Q Exactly what kind of relationship? I mean, did
15 you date infrequently, or frequently? Did you see each other
16 every day? Just give me some idea.

17 A We saw each other every day.

18 Q Was this here in Hartford?

19 A Yes.

20 Q Where was Mr. Oliver living at the time?

21 A 2159 Main Street; same place I was.

22 Q Do you wear glasses?

23 A Sometimes.

24 Q What kind of glasses do you wear?

25 A Tinted ones.

App 24

1 Q Let me ask you this: When is it that you wear
2 glasses, Miss Jenkins?

3 A When I'm doing close work, such as typing or
4 writing.

5 Q At work, mostly?

6 A Yes.

7 Q You were sound asleep on the night that a bottle
8 was thrown at your window? You were asleep at that time?

9 A Yes, I was.

10 Q And you testified that upon hearing the crash,
11 you immediately got out of bed?

12 A Immediately.

13 Q Okay. And then you ran to your bedroom window?

14 A Yes.

15 Q And you saw the reflection in a window; is that
16 right?

17 A Right.

18 Q What window was this?

19 A The window of the main house next door -- the
20 neighbor's house.

21 Q How close is that to your house?

22 A About eight feet.

23 Q And exactly what did you see reflected in that
24 window?

25 A A man running away.

App 25

1 Q A man running away?

2 So at that time, did you just see the back of a
3 man reflected?

4 A Yes.

5 Q And, I assume, running?

6 A Running.

7 Q Exactly how many seconds is it that you saw a
8 reflection in that window? Just for a second or so?

9 A Yes.

10 Q How close is your bedroom window to the front of
11 the house?

12 A Maybe about ten feet.

13 Q Therefore, whoever threw the object at your window
14 had about ten feet to run to get to the front of the house,
15 so they could turn, and you could no longer see them in the
16 reflection?

17 A Right.

18 Q And then after you saw this reflection, did your
19 mother come in the room?

20 A I met them on the way out.

21 Q Who do you mean by "them"?

22 A My mother.

23 Q Okay. And who else?

24 A That was all.

25 Q Okay, you met your mother on the way out of your room?

App 26

1 A Right.

2 Q And what did you say to her, Miss Jenkins?

3 A I told her to go to the kitchen window, because
4 Perk was running down to Main Street.

5 Q Who was running?

6 A James Oliver.

7 Q What did you call him?

8 A Perk.

9 Q At that time, when you told your mother Perk, you
10 really didn't know whether or not it was James Oliver,
11 did you? You just had seen a man?

12 A I knew it was him.

13 Q How did you know it was him? You just saw the
14 back of someone reflected in the glass, did you not?

15 A True, but if you lived with someone long enough,
16 you know them back and front.

17 Q And it was just for a second that you saw someone
18 running?

19 A Right.

20 Q In the reflection?

21 A Right.

22 Q Now, where is the kitchen window? It is not at
23 the front of the house; is that correct?

24 A Correct.

25 Q It is on the other side of the apartment?

App 2

1 A Right.

2 Q And you said it took you just a number of seconds
3 to get to the kitchen window?

4 A Yes.

5 Q This was a summer night, was it not?

6 A True?

7 Q Are there any trees there on the side of your
8 building?

9 A There is one tree.

10 Q Does it block any of the windows?

11 A No, it doesn't.

12 Q How many windows do you have on the side of your
13 building there, that are in your apartment?

14 A Four.

15 Q And the kitchen window is one of them?

16 A (Witness nodded affirmatively).

17 Q Now, did you and your mother go together to the
18 window?

19 A Yes, we did.

20 Q And you didn't look out any of the front windows?

21 A No.

22 Q Why not?

23 A Because if you look out the front window, you are
24 looking onto Capen Street, and if you look out the kitchen
25 window, you are looking onto Main Street.

App 28

1 Q Let me ask you this: The reflection you saw of
2 someone running, I assume that was up the driveway?

3 A Right.

4 Q When they ran up the driveway, what street would
5 that individual be on?

6 A Capen Street.

7 Q Capen Street? But you ran towards the kitchen
8 window, not to look onto Capen Street?

9 A I ran to the kitchen window to look onto Main
10 Street.

11 Q Main Street is perpendicular to Capen Street?

12 A Yes, it is.

13 Q And immediately under your kitchen window is a
14 field?

15 A Right next to my house is a vacant lot, and across
16 the street from that is the playground.

17 Q How far would you say your house was from the
18 playground? Maybe a football field?

19 A Could be.

20 Q And this was early in the morning?

21 A About ten of two.

22 Q And it was dark out, but there were some lights on?

23 A Right.

24 Q These were where?

25 A Overlooking the basketball court.

App

1 Q How far is the basketball court from your house?

2 A Maybe 150 feet.

3 Q Well, is the basketball court in the playground?

4 A Yes, it is.

5 Q You just said that the playground may be about a
6 football field, or a hundred yards, three hundred feet from
7 your house. And the basketball court is a little further
8 in the playground?

9 A Yes, it is.

10 Q So how far would the playground be from your house?
11 More than a football field?

12 A Yes, about a football and a half.

13 Q About a football field and a half? About 150 yards?

14 A Whatever it is.

15 Q Okay. And that is where you saw James Oliver?

16 A Yes, it is.

17 Q Do you remember what he had on?

18 A Yes, I do. He had on a dungaree jacket and some
19 work pants.

20 Q And some work pants?

21 Now, you testified that earlier that night you had
22 seen him on Capen Street; is that correct?

23 A Yes, I did.

24 Q And you stated he was carrying two bottles?

25 A Yes.

App 30

- 1 Q How well could you see the two bottles?
- 2 A I just saw the two bottles.
- 3 Q How was he carrying them, one in each hand?
- 4 A He had them tucked under.
- 5 Q Under what?
- 6 A Under his arm, like.
- 7 Q Like under here (indicating)?
- 8 A Yes.
- 9 Q One under each arm?
- 10 A Yes.
- 11 Q Could you see whether or not they had anything in
- 12 them?
- 13 A No, I couldn't.
- 14 Q They could have been Coca Cola bottles?
- 15 A Could have been.
- 16 Q With some Coca Cola in it?
- 17 A Could have.
- 18 Q And you were on the porch at that time?
- 19 A Yes, I was.
- 20 Q Were you alone, Miss Jenkins, or was anyone with
- 21 you on the porch?
- 22 A I was alone.
- 23 Q And you were just outside because it was a nice
- 24 summer night, or a hot summer night?
- 25 A I was out trying to cool off.

AP 31

1 Q Okay. Did Oliver see you?

2 A I don't know.

3 Q How did it come that you two happened to talk, or
4 he talked to you?

5 A He didn't talk to me. He just made a statement
6 about "I'm going to burn the house down." There were people
7 on the first floor that was on the porch.

8 Q Okay. He just said this, without knowing whether
9 or not you were on the second floor porch?

10 A Yes.

11 Q In other words, you don't know whether or not he
12 saw you, and you two weren't talking?

13 A No.

14 Q But from where you were sitting on the porch, you
15 could see him?

16 A Yes.

17 Q And during the time you just heard him say, out
18 loud, "I'm going to burn the house down"?

19 A He was mumbling to himself.

20 Q He was mumbling? Now, what side of Capen Street
21 was he on?

22 A The opposite side of the street.

23 Q How far was that from your porch?

24 A About where you are standing to where I am now.

25 Q This would mean from your porch -- is there any

1 front yard or sidewalk?

2 A There is a sidewalk.

3 Q That is a couple of feet -- how wide is the street?

4 A Two cars can go up and down it all right.

5 Q And sometimes a parked car, and still two cars can
6 go up, can't they?

7 A Right.

8 Q Would it be closer to the truth that if I were
9 James Oliver, on the other side of the street, it might be
10 a little more like over here (indicating)?

11 A No.

12 Q As you sat on the porch, you heard him mumble
13 "I'm going to burn your house down", or "I'll get you"?

14 What were the words exactly that you heard?

15 A "I'm going to burn the house down."

16 Q Who did he mumble them to?

17 MR. SMITH: I object. She didn't testify
18 that he was mumbling. She heard him say something.
19 She didn't say he mumbled the threat that she
20 heard.

21 BY MR. STURTEVANT:

22 Q Who were these words uttered to, Miss Jenkins?
23 Was he talking with anyone?

24 A No, he was talking to himself.

25 Q Was there anyone on the other side of the street

App

1 that you saw near him as he walked up the street, talking
2 to himself?

3 A No, he was alone.

4 Q All right. And this was around ten o'clock?

5 THE WITNESS: Yes.

6 THE COURT: How loudly did he speak?

7 THE WITNESS: It was very clear. I could
8 understand everything he said.

9 THE COURT: As loud as you are speaking now?

10 THE WITNESS: Perhaps.

11 BY MR. STURTEVANT:

12 Q Did you do anything when you heard these words
13 uttered?

2 14 A I just looked at him and said a few things to myself,
15 and walked in.

16 Q The next time you saw him that night was when he
17 was running across the field to the playground?

18 A Yes, sir, it is.

19 Q Now, there is an incident you talked about, about
20 a TV. Whose TV was this?

21 A He had given that TV to me.

22 Q Was this when the two of you were living together?

23 A Yes, sir, it was.

24 Q And you had broken up in April, so you were no
25 longer living together?

App 34

1 A Right.

2 Q And he came by to get the TV back, and at first
3 you were a little hesitant to give it back to him? .

4 A I wasn't hesitant; I just wasn't giving it up.

5 Q You wanted to keep the TV?

6 A Yes.

7 Q Okay, and eventually you gave it up?

8 A Yes, I figured it would settle everything.

9 Q Did you give it up to him up in your apartment on
10 the second floor?

11 A No, I took it downstairs and put it on the porch.

12 Q Okay. After you put it on the porch, what did
13 you do?

14 A I turned around to go back into the house.

15 Q And then as you were going up, going back to your
16 apartment, you heard the TV smash?

17 A Yes.

18 Q Did you go back down?

19 A No.

20 Q When was it that you saw the TV smashed?

21 A When I got upstairs on the porch.

22 Q And you looked out?

23 A Yes.

24 Q Did you see Oliver then?

25 A Yes, I did see him.

App 3

1 Q Where was he?

2 A Standing out there in the street, hollering and
3 screaming.

4 Q Was he hollering at you?

5 A He was hollering -- hollering, but he was talking
6 about me.

7 Q Then there came some time and he left, I assume?

8 A Yes.

9 Q When was it that you received some phone calls at
10 your apartment?

11 A After he left, he started calling on the telephone,
12 calling and calling and calling.

13 Q How many of these phone calls did you talk to him?

14 A I didn't talk to him any time.

15 Q You didn't talk to him at any of those times?

16 A No.

17 Q Who talked to him, that you know?

18 A One time my mother talked to him; my brother talked
19 to him.

20 Q Okay. So whatever was said on that phone call,
21 the telephone conversations had to be related to you by
22 another person?

23 A No, I was listening on the extension in my bedroom.

24 Q So you picked up the telephone, too?

25 A Yes.

35
APP 36

1 Q But you just didn't talk to him?

2 A Right.

3 Q And what were some of things he said to you, the
4 first phone call you can remember?

5 A That he was talking on the phone -- I was
6 listening, and he just said "Let me talk to her. Please let
7 me talk to her, I can explain."

8 And they kept telling him "She don't want to talk;
9 she don't want to talk."

10 He kept on insisting that he talk to me, and then
11 he hang up, and he'd go away and call back someplace else.

12 Q Did he ever say his name, "This is James Oliver",
13 when he called?

14 A No, he never said his name.

15 Q And you are saying that you knew it was him because
16 you know his voice?

17 A Right.

18 Q And that you two have talked on the phone previously?

19 A Right.

20 Q Those phone calls that you heard, after the TV
21 was smashed, was an attempt for him to try to talk to you?

22 A Yes.

23 Q No threats were made then? It wasn't then that
24 any threats were made on the phone?

25 A No.

App 37

1 Q Then after the TV was smashed, and after some
2 phone calls, you were out on the porch when you saw James
3 Oliver, and this is when you saw him with two bottles?

4 A Yes.

5 Q Then three or four hours later is when you awakened
6 from your sleep, because of a noise of something hitting the
7 window?

8 A Right.

9 Q Okay now, you said that no objects came through
10 the window?

11 A No.

12 Q Just some liquid?

13 A And the broken glass from the window.

14 Q Okay. Did you have your glasses on when you got
15 up out of bed, or was it so quick that you didn't put your
16 glasses on?

17 A I don't usually put my glasses on when I get up.

18 Q You didn't have your glasses on?

19 A No.

20 Q What did Oliver have on when you had seen him at
21 ten o'clock, supposedly, down on the sidewalk with the bottles?

22 A Work clothes and a jacket.

23 Q I'm sorry, I couldn't hear you.

24 A Work clothes.

25 Q What kind of work clothes?

App 38

- 1 A He had on dark colored pants, and a dark jacket.
- 2 Q What kind of clothes was it that he had on when
- 3 you saw him at the basketball court later on?
- 4 A The same thing.
- 5 Q The same clothes?
- 6 A Same clothes.
- 7 Q Do you know Curly Robinson, Miss Jenkins?
- 8 A Curly who?
- 9 Q Robinson.
- 10 A I don't know a Curly Robinson.
- 11 Q You don't know someone named "Curly"?
- 12 A Yes, I do.
- 13 Q I got the wrong last name?
- 14 A Yes.
- 15 Q What is the last name?
- 16 A Ross.
- 17 Q Ross, I'm sorry. Was he around at all that night?
- 18 A Yes, he was.
- 19 Q Where was he?
- 20 A He was on the front porch.
- 21 Q On your floor or on another floor?
- 22 A The first floor.
- 23 Q He wasn't in your apartment?
- 24 A No, he wasn't.
- 25 Q And he didn't hear any of the phone conversations?
- 1700

1 A No, he didn't.

2 Q The only persons that heard the phone conversations
3 are you and your brother?

4 A And my mother.

5 Q And your mother?

6 A Yes.

7 MR. SMITH: Your Honor, I think that we better
8 bring out what conversation we are talking about.
9 I believe Miss Jenkins testified that another
10 conversation was heard at two o'clock in the
11 morning by Officer McQueeney.

12 BY MR. STURTEVANT:

13 Q Okay, let's go to that phone conversation.

14 Shortly after this object was thrown at your bed-
15 room window, you called the Hartford Police Department?

16 A Yes, I did.

17 Q And they arrived shortly after?

18 A Yes.

19 Q And an Officer McQueeney came; is that correct?

20 A Yes.

21 Q Is she a woman police officer?

22 A Yes, she is.

23 Q Was she alone? Was there another police officer
24 with her?

25 A There may have been another person with her, but

App 46

1 I didn't see him.

2 Q Okay, and I assume you related what happened to
3 Officer McQueeney?

4 A Yes, I did.

5 Q And then a phone call came to your apartment?

6 A Right.

7 Q Who answered the telephone?

8 A I did.

9 Q When you answered it, what was said?

10 A There was a pause.

11 Q Okay.

12 A And he said "Cookie?" And I said "Yes".

13 And he said "I might have missed you this time,
14 but I'll get you the next."

15 I said "What?" And then he hung up.

16 Q Then you hung up?

17 A Yes.

18 Q So it was a very brief conversation?

19 A Yes.

20 Q Where was Officer McQueeney?

21 A In my bedroom.

22 Q When the phone rang, did Officer McQueeney
23 immediately run to his bedroom?

24 A She was already in the bedroom, looking at the
25 window.

1 Q And you were in the living room?

2 A In the living room, sitting on a chair?

3 Q Could you see Officer McQueeney from the living
4 room?

5 A Yes, I can.

6 Q Did someone tell her to pick up the phone?

7 A I did.

8 Q How did you do that?

9 A I just pointed to the phone.

10 Q Did the person calling ever give his name?

11 A No, he didn't.

12 Q And you are saying that you know the voice, and
13 that's the voice of James Oliver?

14 A Yes, it is.

15 Q Was there anyone else listening on the phone other
16 than yourself and Officer McQueeney?

17 A Yes, my mother.

18 Q Where was she?

19 A In the kitchen.

20 Q How did she know to pick up the phone? Could you
21 see her from where you were?

22 A I could look in the mirror and see her, yes.

23 Q Did she pick up the phone at the same time you did?

24 A Yes, because she was going to answer it, but I
25 answered from the living room.

App 42

1 THE COURT: How many phones are there, two?

2 THE WITNESS: Three.

3 THE COURT: Three.

4 Q And the words were "I might have missed you this
5 time, but I'm going to get you"; is that correct?

6 A Yes.

7 Q After that, were there anymore phone calls that
8 night?

9 A I don't know. I went back to bed.

10 Q You didn't have any phone conversation with James
11 Oliver after that?

12 A No, no.

13 Q Now, Miss Jenkins, when this crash woke you up
14 from your sleep, didn't you become a little excited?

15 A Yes, I was excited.

16 Q A little frightened?

17 A Yes, I was frightened.

18 Q And you say you smelled some gasoline?

19 A Yes, I did.

20 Q And that scared you?

21 A Yes, it did.

22 Q Your heart was beating pretty fast?

23 A Yes, it was.

24 Q And then after you quickly looked out your window,
25 you ran over to the kitchen window; is that right?

App 43

1 A Right.

2 Q And while you were at the kitchen window for a
3 few seconds, you saw someone run across, and saw him
4 standing on the basketball court, and you said that's
5 James Oliver; is that right?

6 A Yes, it is.

7 Q How long did that take, just a matter of seconds?

8 A About 15 seconds.

9 Q About 15 seconds? Then it was that either you or
10 your mother called the police?

11 A I called the police.

12 Q Okay. I assume your mother -- do you know whether
13 or not your mother had been sleeping when this crash came?

14 A No, they was wide awake; they couldn't get back
15 to sleep after all the other commotion, the phone calls.

16 Q Who do you mean, your brother and mother?

17 A And my little sister.

18 Q Since this incident, Miss Jenkins, have you or
19 James Oliver seen each other socially at all?

20 A No, we haven't.

21 Q In other words, you say you are no longer friends?

22 A No, we're not.

23 Q You haven't gone out on any dates since this
24 happened?

25 A No, we haven't.

BPP44

1 Q You haven't rode around in a car with each other,
2 or anything?

3 A No, we haven't.

4 MR. STURTEVANT: Could I have the Court's
5 indulgence for a moment, please?

6 (Pause.)

7 Q Miss Jenkins, when you described the clothing of
8 Oliver at ten o'clock, would you repeat again what it was?
9 I think you said dark, work clothes; is that what it was?

10 A Like he had on a dungaree jacket.

11 Q A dungaree jacket?

12 A And either dungarees, or the regular work pants.

13 Q Any hat? Did he have a hat on?

14 A No, he didn't.

15 Q Now, when you saw the person in the basketball
16 court later on, the clothing was the same?

17 A Yes, he was.

18 Q The dungaree jacket, and maybe dungaree pants?

19 A Right.

20 Q When this individual was over in the basketball
21 court, were there any other individuals over there?

22 A No.

23 Q There was no one playing basketball?

24 A No.

25 Q But there were lights on, so someone could have been,

1 if they wanted to be up at that hour, playing basketball?

2 A Right.

3 Q So as far as you could see, there were no other
4 individuals there but James Oliver; is that right?

5 A That's right.

6 Q And he was alone?

7 A Right.

8 Q Were there any parked cars on Main Street?

9 A No.

10 MR. STURTEVANT: No further questions, your
11 Honor.

12 REDIRECT EXAMINATION BY MR. SMITH:

13 Q You say you saw James Oliver at 8:30?

14 A Yes, I did.

15 Q What did he say to you at that time?

16 A He wanted his television set.

17 Q Okay. What else did he say?

18 A And he just kept hollering and screaming he wanted
19 his television set; he wanted his television set. So I
20 gave him back the television set, and when he picked it up
21 he started hollering and screaming and swearing, and really
22 doing a job.

23 Q Did he threaten you at that time, and say --

24 A Yes, he told me he was going to get me no matter
25 what. He was going to get me.

A-284/L

1 Q You say you saw him again at ten o'clock, an hour
2 and a half later, outside the house?

3 A Right.

4 Q What did he say then?

5 A He was walking up the street -- walking down the
6 street, rather, mumbling. Talking about how he was going
7 to burn the house down.

8 Q Now, you saw him just a few moments after the
9 crash through your window, correct?

10 A Correct.

11 Q What was he doing when you saw him?

12 A Running.

13 Q Away from your house?

14 A Away from my house.

15 Q Did you have any problem at all seeing him?

16 A No, no problem whatsoever.

17 Q What type of lights were in the area?

18 A We have regular street lights, but they are very
19 bright, so you can see anybody walking up and down the
20 street.

21 Q How about up around the playground?

22 A Up around the playground it is well lit, so that
23 people can walk in and out of the park without any trouble.

24 Q How about the lighting around the basketball
25 court?

App 4

1 A My sons. There is Steven Fate Marshall, and
2 Robert D. Marshall. Those two are my sons. And Robin
3 Ross, that is my daughter.

4 Q How old is Robin?

5 A Five.

6 Q Is it an apartment building that you live in?

7 A Yes, it is.

8 Q You live on the second floor?

9 A Yes, I do.

10 Q How many people live, altogether, in your apartment
11 building, that you know?

12 A Well, altogether there is -- I don't know, between
13 16 and 15 people there.

14 Q And are there some children?

15 A Yes.

16 Q And are there elderly people?

17 A Yes.

18 Q Do you know James Oliver?

19 A Yes, I do.

20 Q Do you see him here in court today?

21 A Yes, I do.

22 Q Is he the gentleman sitting at counsel table, in
23 the middle?

24 A Yes.

25 Q How long have you known James Oliver?

App 48

1 A Oh, approximately three years.

2 Q Did he used to date your daughter?

3 A Yes, he did.

4 Q Have you ever had an occasion to speak with him
5 over the telephone?

6 A Yes, I have.

7 Q How frequently?

8 A Well, quite a number of times.

9 Q Could you estimate, if that is possible?

10 A Oh, I don't know, about ten, twelve -- something
11 around like that.

12 Q So you are able to recognize his voice?

13 A Yes, I do.

14 Q Do you recall an incident involving a TV set, with
15 James Oliver?

16 A Yes.

17 Q Can you tell the ladies and gentlemen of the jury
18 when that was?

19 A Well, it was in July -- July the 14th, I think it
20 was, that he called.

21 Q Do you remember about what time it was?

22 A Well, it was approximately, maybe eight or 8:30.
23 He called and he asked could he have his TV from Cookie.

24 So, my daughter, she was going to refuse to give
25 it to him. So I told her to give him his TV.

App. 49

1 So, she immediately unhooked it, and brought it
2 downstairs, where he was. He met her, and she put it on
3 the front porch.

4 Q What happened then?

5 A Well, my daughter was downstairs on the front porch
6 at that time, and Cookie, she came -- she left it down there,
7 and she came back upstairs, and he came over and --

8 Q You say "he". Tell the members of the jury who
9 you mean when you say he came over.

10 A Perk -- Furcell. He came over and he received the
11 television.

12 Q That is James Purcell Oliver?

13 A Yes.

14 Q What did he do with the TV when he got it?

15 MR. STURTEVANT: I don't mind her testifying,
16 as long as she saw it personally. I don't know
17 where she was situated at that time, exactly.

18 THE WITNESS: I was up on -- excuse me.

19 BY MR. SMITH:

20 Q Did you see what James Oliver did with the TV set?

21 A I was up on the second floor, which is my porch
22 that I have. I was up there looking over the bannister.
23 He came over from across the street. He got the television.
24 He went in the middle of the street, and threw the television
25 down.

APP 50

1 Then he proceeded to go back across the street,
2 to the corner there, by Thompsons, and begin to yell and
3 scream and use profanity.

4 Q Did you hear him say anything about Lilly at that
5 time, your daughter, Cookie?

6 A Yes, he did say "I'll get you, Cookie."

7 Q What happened then, around 8:30, or so, after the
8 television was smashed and James -- what happened? What
9 did he do?

10 A Well, he was around by Thompson Furniture Store,
11 and he started to, as I said, started using profanity and
12 everything.

13 And after that, I thought he was gone, because he
14 walked a little distance up from Thompsons, going toward
15 Main Street.

16 Then, so, we came back, and then the telephone
17 began to ring, and it was him. He called and he demanded to
18 speak to Cookie. And she didn't want to talk to him.

19 So I told Oliver, James, that she didn't want to
20 have anything to say to him. So, he begged, and I told him
21 I'm sorry. So, he wanted me to plead with her to talk to
22 him. He said that's all he wants to do was talk to her.

23 So naturally, I put down the receiver, and I talked
24 to her. But she wouldn't. And I came back to the telephone
25 and I told him, I said, just like this, I said "Perk," I said,

App. 4

1 "She not coming to the telephone, and I cannot make her."

2 Q So what happened then?

3 A Well, then I hung up. And then he called, and
4 she got the telephone. And now, what they said, I don't
5 know.

6 Q In other words, the thing I am getting at, did
7 the phone keep ringing and ringing?

8 A Yes, he wanted to talk to her.

9 Q Did you see him again that evening?

10 A Yes, I did.

11 Q What time was that that you next saw him?

12 A Approximately about 1:30.

13 Q Now, we are talking -- you saw at eight o'clock?

14 A Yes, about eight, 8:30.

15 Q Around eight or 8:30?

16 A Yes.

17 Q Did you see him anytime after that, but before
18 two o'clock?

19 A No, I didn't.

20 Q Did you see him walk by the house?

21 MR. STURTEVANT: Your Honor, that is a leading
22 question.

23 THE COURT: Sustained.

24 MR. SMITH: May I have just a moment, your
25 Honor? I am looking for a document.

App 52

1 Q The next time you saw Mr. Oliver was what time?

2 A 1:50 it was.

3 Q Would you tell us what happened then?

4 A Yes, there's a telephone booth right by the corner,
5 and the telephone had rang, and -- I don't know, I didn't
6 answer it at that time, but it rang, and somebody said it's
7 Perk; it's James, and he wants to talk to Cookie."

8 And I immediately told him, I said, well, Cookie
9 is not talking.

10 And by that time they hung up. And after -- I
11 can't think of whether it was Steven or my other son who
12 answered the phone, but by the time I went to the door, and
13 I was looking around to see what Cookie, you know, was
14 actually listening in on the telephone -- because there is
15 three telephones.

16 So she told me "Momma, that's still Perk."

17 But, then before -- let's see. About that time,
18 that is when the big thing happened. Everything was quiet.

19 Q Okay now, that is what I am getting at. Can you
20 tell the members of the jury just what you mean when you
21 say the big think happened?

22 A Well --

23 Q What was that big thing?

24 A Well, everybody was quiet and situated about time
25 for bedtime anyway, and we heard this big, loud crash of glass.

App 5

1 And naturally, everybody starts jumping up, because
2 it comes from Cookie's room. So we all headed that way.

3 And when we got there, she was running out of the
4 door, because both of her room doors was closed, so she was
5 running out of the door.

6 So we went back, and there was all the glass and
7 everything, all over the floor, and in the window sills,
8 and everything.

9 So, everybody got upset and frightened, and stuff.
10 And the smell of kerosine -- or whatever it was -- it was
11 smelling in her room.

12 So we immediately run to the kitchen, to see what
13 we could see was going either down or anything, and there,
14 going across the street toward the playground, was James.

15 Q How was it you were able to see James Oliver at
16 almost two o'clock in the morning?

17 A Because it was a nice night. A nice, clear night,
18 and it is a plain vacant lot between my house and the corner.
19 It is nothing there.

20 And then from my window on the second floor, you
21 can see down where the boys play basketball at night. They
22 have one of those big, bright lights over the basketball
23 court.

24 Q Are you absolutely positive that James Oliver --
25 that it was James Oliver that you saw?

App. 54

1 A Yes.

2 Q So what happened then? What did you do?

3 A Then my daughter, she begin to call the police.
4 And a policeman, McQueeney, she came. And she investigated
5 and everything.

6 And then the telephone rang while she was there.
7 And I asked her -- Cookie was on one telephone; I was on
8 the other -- and I asked her, the policewoman, if she would
9 get on the one in the bedroom. So she did, and it was
10 Perk.

11 And he said "I missed this time, but next time I
12 won't."

13 Q And you heard that?

14 A I heard that distinctly.

15 Q You heard that clearly, and there is no problem
16 with your hearing?

17 A No, there isn't.

18 Q Is there any problem with your vision?

19 A No.

20 Q Do you wear glasses?

21 A No, I don't.

22 Q Did your phone ring anymore that night?

23 A Yes, it rung quite a few times that night. And
24 then all of a sudden it just stopped, because then nobody
25 was answering the telephone there.

App 5

1 MR. SMITH: I have nothing further.

2 CROSS-EXAMINATION BY MR. STURTEVANT:

3 Q Mrs. Marshall, when this big crash came in your
4 daughter's bedroom, where were you in the apartment?

5 A In my bedroom.

6 Q Where is that in relation to your daughter's bed-
7 room?

8 A Well, it is just a room away.

9 Q And it was your testimony that shortly before
10 this crash, there had been a phone call?

11 A I didn't hear you.

12 Q It was your testimony that shortly before the
13 crash, there had also been a phone call?

14 A Yes.

15 Q And this is when your daughter said that's Perk,
16 too?

17 A Yes.

18 Q "That's Perk, too"?

19 A Yes.

20 Q And then a few minutes later, there was a crash?

21 A Yes.

22 Q And when you heard the crash, you went running
23 into your daughter's bedroom?

24 A Yes, everybody did.

25 Q And that's when you saw the glass?

App 56

1 A Yes.

2 Q And then what did you do again? You looked at the
3 glass and looked at the window; what exactly was it you
4 did?

5 A No, after all of us ran into Cookie's room, we
6 looked and saw the glass and everything, and then I ran --
7 I ran right to the kitchen window there, because I know you
8 could see very distinctly whoever comes and goes down Capen
9 Street, or down Main Street. And I was looking, and --

10 Q Okay. When you ran into your daughter's bedroom,
11 what did she say to you?

12 A Well, she was so upset, it wasn't too much she
13 could say, but, "Somebody threw a bottle at the window".

14 Q That's what she said? "Somebody threw a bottle at
15 the window"?

16 A Yes.

17 Q And that's when you ran to the kitchen?

18 A Yes.

19 Q She didn't say at that point "James Oliver threw
20 a bottle threw the window"? She said "Somebody"?

21 A She said somebody threw the bottle.

22 Q Okay then, when you got to the kitchen and you
23 could look out across the vacant lot to the playground --
24 is that correct?

25 A Yes.

APP 57

1 Q Were there some kids playing on the basketball
2 court?

3 A No, it wasn't. It was -- well, at that time of
4 night it wasn't anybody, hardly nobody on the street.

5 Q You couldn't see anyone else but Oliver?

6 A That's the only person that was in there.

7 Q Do you remember what clothes this individual had
8 on?

9 A Well, as far as I can remember, he had on a pair
10 dungarees, and it looked like a light tee shirt or a coat,
11 a jacket.

12 Q Were you pretty upset that night?

13 A Yes, I was.

14 Q All those phone calls had disturbed you?

15 A Very much so.

16 Q And you were very worried?

17 A Yes.

18 Q You were concerned?

19 A Right.

20 Q And when the crash came, did you get even more
21 excited and more upset?

22 A Yes, I did.

23 Q And your daughter was very upset, wasn't she?

24 A Yes -- well, the whole house was upset, with kids
25 and everything, and my younger daughter, she was more so upset.

App 58

1 She was disturbed out of her sleep, and she was nervous and
2 upset through the whole night.

3 Q Was she crying?

4 A Yes, she was.

5 Q There was some confusion in your house then?

6 A Yes.

7 Q Understandably so.

8 A Yes.

9 Q Now, by the time you got to the kitchen window,
10 where was this man? He was already on Main Street?

11 A He was over going -- jumping over the fence. It
12 is a little rail, like you can jump over the fence, and you
13 could go down, straight down through. That is where you
14 go to the basketball. It is in the middle of the entrance
15 to Bellevue Street, and to Main Street.

16 Q How far would you say your kitchen window was
17 from the basketball court?

18 A I approximate maybe about 100 yards or so.

19 Q A football field or more?

20 A No, not that far.

21 Q A football field is 100 yards.

22 A No -- well, I'll say -- I don't know. It is not
23 too far then from my window to there.

24 Q How many seconds did you get to observe this
25 individual standing over in the playground? Just a second

1 or two?

2 A About a second or two. Because he was gone. He
3 paused one time to look around.

4 Q And you had seen Oliver earlier that night when
5 he had come for the TV set; is that correct?

6 A Yes.

7 Q And you had overheard a couple of conversations,
8 telephone conversations between the time he came for the
9 TV and the time you heard the crash through your daughter's
10 bedroom window; is that right?

11 A Yes.

12 Q So you had a pretty strong feeling when you saw
13 the glass in your daughter's bedroom that it was Oliver,
14 didn't you?

15 A Yes, I did.

16 Q Then when you looked out the kitchen window and
17 saw the person in the court, you decided that was Oliver?
18 Is that right?

19 A I knew that was Oliver.

20 Q Because your daughter had told you from the tele-
21 phone call right before the crash in her window -- that
22 telephone call you said was just a few minutes before the
23 crash. She didn't have much time to get to sleep, then,
24 did she?

25 A No.

App 60

- 1 Q Just a couple of minutes?
- 2 A Yes.
- 3 Q Was she dressed in her night clothes?
- 4 A Yes, she was.
- 5 Q Did you take a look out the bedroom window?
- 6 A Yes, I did.
- 7 Q And what did you see?
- 8 A Well, all I seen was something spilled on the
- 9 side of the wall of the building. And then somebody went
- 10 downstairs and found it was bottles, with cotton, right at
- 11 her window.
- 12 Q That was later that night, or right away?
- 13 A That was right away it was done.
- 14 Q All right. Where were you when Officer McQueeney
- 15 had already come to your apartment and a phone call came?
- 16 Where were you?
- 17 A I was in my den.
- 18 Q You were in the den? And where was your daughter?
- 19 A She was in the kitchen.
- 20 Q Okay. And where was Officer McQueeney?
- 21 A She was in the bedroom. There is three phones.
- 22 Q And you can see each other pretty easily?
- 23 A Yes, you can.
- 24 Q And who picked up the phone first?
- 25 A I did.
- App

1 Q And what did you hear?

2 A Well, I said hello, and he said "Hi" -- just like
3 that.

4 Q The voice on the phone said "Hi"?

5 A Yes.

6 Q Then what was said next?

7 A And it was a little talk going on. Then finally
8 he just said, that I heard, he said "I missed this time,
9 but next time I won't."

10 And then I had him to repeat it, because I got
11 the policewoman, and Cookie was already on the telephone,
12 and the policewoman. And I went and told her to pick up the
13 other one, the other receiver. And she heard him when he
14 said it again.

15 Q How long did the phone conversation last?

16 A Not too long.

3 17 Q And by those words, did you interpret those words
18 to mean whoever was saying that was going to get your
19 daughter?

20 MR. SMITH: I object to that. I submit that
21 her interpretation is irrelevant. The thing that
22 is relevant is that a threat was made. That is
23 obvious.

24 MR. STURTEVANT: She was the one talking at
25 first. I just wanted to know whether she felt it

App 62

1 was to her or to her daughter.

2 MR. SMITH: All right.

3 BY MR. STURTEVANT:

4 Q Who was conversing with the individual on the
5 phone at that time?

6 A I was.

7 Q What were the words said, again?

8 A He said "I missed this time, but next time I won't."

9 Q Did that individual know who else was on the
10 phone at that time?

11 MR. SMITH: I object again, your Honor.

12 MR. STURTEVANT: She can testify whether the
13 other person was known by the other two individuals.
14 Any knowledge that they had on the phone --

15 MR. SMITH: Excuse me. I don't think she
16 can. She said her daughter picked it up first.
17 As a matter of fact, her daughter testified --

18 MR. STURTEVANT: Maybe I'm not being clear.

19 MR. SMITH: He mentioned her daughter's
20 name.

21 MR. STURTEVANT: I'll see if I can rephrase
22 it.

23 BY MR. STURTEVANT:

24 Q At one point, there were three people listening
25 in on the same phone conversation; is that correct?

App. 63

1 A Yes, um-hum.

2 Q Did Officer McQueeney say anything on the phone?

3 A No, she didn't.

4 Q Did your daughter?

5 A No, she didn't.

6 Q It was just you and the other person?

7 A Um-hum.

8 Q Mrs. Marshall, on that night, were you under the
9 care of a physician for anything? You didn't by any chance
10 take any medicine, whether it be aspirin, or anything else?

11 A No.

12 Q Had you had any drinks of alcohol that night?

13 A No.

14 Q Mrs. Marshall, did you testify that it was a clear
15 night? Had it rained at all that night, to the best of
16 your recollection?

17 A The earlier part, I think it did.

18 Q It had rained earlier?

19 A Yes.

20 Q Was it raining at the time that the thing was
21 thrown at your daughter's window?

22 A No, it wasn't. It was an awfully clear night.

23 Q No clouds?

24 A No.

25 Q It wasn't dark?

App 164

1 A It wasn't really dark; it was a nice, bright
2 night, that you could actually see good.

3 MR. STURTEVANT: No further questions.

4 MR. SMITH: Nothing further.

5 THE COURT: Thank you. Next witness.

6 (Witness excused.)

7 MR. SMITH: The Government calls Steven Fate
8 Marshall.

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App

1 STEVEN F. MARSHALL, appearing as a
2 witness, being duly sworn, testified as follows:

3 THE CLERK: Would you state your full name?

4 THE WITNESS: Steven Fate Marshall.

5 THE CLERK: Your address?

6 THE WITNESS: 20 Capen Street.

7 THE CLERK: Hartford?

8 THE WITNESS: Yes.

9 DIRECT EXAMINATION BY MR. SMITH:

10 Q State your age please, Steven.

11 A 18.

12 Q Where do you live?

13 A 20 Capen Street.

14 Q How long have you lived there?

15 A 18 years.

16 THE COURT: Excuse me. Can we get the
17 educational background of the witness?

18 Q Tell the jury what your educational background is.

19 A I'm a graduate from Hartford Public High School,
20 last year.

21 Q Were you living at 20 Capen Street in July, 1974?

22 A Yes, I was.

23 Q Do you know James Oliver?

24 A Yes, I do.

25 Q Do you see him in court today?

65
App. 66

1 A Yes, I do.

2 Q Is that he seated over there at the counsel table,
3 wearing the pinkish colored outfit?

4 A Yes.

5 Q Have you ever spoken to him before?

6 A Yes.

7 Q About how many times?

8 A Several hundred.

9 Q Did you ever talk to him on the telephone?

10 A Yes.

11 Q Were you home at your house on Capen Street on
12 July 15, 1974?

13 A Yes.

14 Q Did anything unusual happen that night?

15 A Yes, it did.

16 Q Tell the members of the jury what it was unusual
17 that happened?

18 A Well, I was laying in bed and I heard some glass
19 breaking. So I thought my sister had a broken glass, and
20 I heard my mother running.

21 So I went to see, and I looked in the room. So,
22 the window was broke. You could smell the gas around the
23 edge, and the police came --

24 THE COURT: Can everyone hear him?

25 MR. STURTEVANT: Just barely.

App 6

1 THE COURT: Speak up good and loudly now,
2 Steven, so everybody can hear you.

3 THE WITNESS: All right.

4 THE COURT: Speak out as though you were
5 angry at the prosecutor, so that he will hear you.

6 BY MR. SMITH:

7 Q You said the police came that evening?

8 A Yes.

9 Q Did you answer the telephone at all that evening?

10 A Yes, I answered it.

11 Q Now, did you answer the telephone after the police
12 left?

13 A Yes.

14 Q Did you have a conversation with somebody?

15 A Yes, I did.

16 Q Did you recognize the voice of the individual who
17 was calling?

18 A Yes, I did.

19 Q Whose voice was it?

20 A James Oliver.

21 Q What did James Oliver say?

22 A He said I better leave the house in ten minutes
23 or he going to blow it up.

24 Q Did you tell your mother this?

25 A Yes, I did.

7
App. 68

1 Q Do you know if your mother reported it to the
2 police?

3 A No, she didn't.

4 Q Do you know why?

5 A I think she said she figured that they caught him
6 already.

7 Q You are absolutely certain it was James Oliver
8 who said that?

9 A Yes, I am.

10 MR. SMITH: Nothing further, your Honor.

11 CROSS-EXAMINATION BY MR. STURTEVANT:

12 Q Mr. Marshall, when did this phone conversation
13 occur?

14 A Around 2:30, a quarter to two -- somewhere around
15 there.

16 Q This is the same night when the bottle was thrown
17 through the window?

18 A Yes.

19 Q Were you the only one that answered the telephone?

20 A Yes.

21 Q The police had already been to your house?

22 A Yes.

23 THE COURT: Excuse me. This was after the
24 bottle had been thrown, Steven?

25 THE WITNESS: Yes, it was.

App-6

1 Q How long have you known James Oliver?

2 A Around three years.

3 Q During the time that your sister dated him; is
4 that right?

5 A Yes.

6 Q Were you two considered pals? Did you run around
7 with him at all?

8 A I went with him sometimes.

9 Q When you picked up the phone, who said what, first?

10 A He did. I said hello.

11 Q You said hello. What did the other person say?

12 A He just started talking.

13 Q What did he say?

14 A He said you got two minutes to leave the house,
15 or he going to blow it up.

16 Q Then what was said?

17 A Nothing. I said "Later".

18 Q You said what?

19 A "Later" -- "Good-bye."

20 Q And you hung the phone up?

21 A Yes.

22 Q How long did that phone conversation last?

23 A Around three minutes.

24 Q How much time prior to that had you talked with
25 James Oliver on the telephone?

9
App 70

1 A You mean the same night? What you mean?

2 Q The whole time you have known him.

3 A Oh, around a hundred.

4 Q That night, had you talked with him on the phone
5 at all?

6 A Yes, I talked to him that night.

7 Q What time?

8 A Around a quarter of two, 2:30.

9 Q What was said in that phone conversation?

10 A "You got two minutes to get out of the house or
11 I'm going to blow it up."

12 Q How many such phone calls were made that night?

13 A I didn't count them.

14 Q And he said the same thing each time?

15 A No.

16 Q Pardon me?

17 A No.

18 Q All right. Let's go back to the point in time
19 when the crash occurred in your sister's room.

20 A Yes.

21 Q And you were in the apartment at that time; is
22 that correct?

23 A Yes.

24 Q And soon after the Hartford Police Department came;
25 is that correct?

App. 71

1 A Yes.

2 Q And then a phone call occurred; is that right?

3 A Yes.

4 Q And you didn't answer the phone at that time,
5 because your mother and your sister and the police officer
6 were on the phone; is that right?

7 A That's right.

8 Q Then after that, were there any phone calls in
9 which you picked up the telephone?

10 A After that, yes.

11 Q How many?

12 A One.

13 Q And that was the one you just testified to?

14 A Yes.

15 Q And is that the only phone calls that occurred
16 that night, after?

17 A Yes.

18 Q So that after that one phone call, in which your
19 mother and sister and a police officer listened in on the
20 phone, you only had one telephone conversation?

21 A Yes.

22 Q Did the person that called that time identify
23 himself by name?

24 A No, he didn't.

25 Q Did he call you by name?

App 72

1 A No, he didn't.

2 Q Was everyone else in the house asleep at that
3 time?

4 A No, they wasn't.

5 Q Where were they?

6 A My mother and them was downstairs.

7 Q But no one else overheard you talking with someone
8 on the telephone?

9 A Yes, my sister did, but she didn't want to answer
10 her phone.

11 Q Was she in the bedroom?

12 A No, she was standing right beside me.

13 MR. STURTEVANT: No further questions, your
14 Honor.

15 MR. SMITH: Nothing further, your Honor.

16 THE COURT: What did you after you hung up,
17 Steven? You said that he said to get out of the
18 house in two minutes; I'm going to blow it up.
19 What did you do after you hung up?

20 THE WITNESS: I went back to bed.

21 THE COURT: You went back to bed?

22 THE WITNESS: Yes.

23 THE COURT: You weren't too concerned about
24 getting blown up that night?

25 THE WITNESS: Not really.

1 MR. SMITH: She already has.

2 THE COURT: Well, she started to answer the
3 question -- if you ask "Do you remember this
4 particular piece of glass?" She'll say no.

5 MR. STURTEVANT: I'll say this, your Honor:
6 Should the Government finish the case, and
7 whether or not I will have a witness, I don't
8 know, but I certainly don't object to allowing
9 the Government to come back with that witness,
10 even though it certainly wouldn't be a rebuttal
11 witness. That can be done out of any order. I
12 have no objection.

13 THE COURT: All right. It is in for identi-
14 fication.

15 (The following transpired in open court):

16 BY MR. SMITH:

17 Q Moving away from this for a moment, Officer
18 McQueeney, can you tell the ladies and gentlemen of the
19 jury just what happened while you were at the apartment at
20 20 Capen Street at two o'clock that morning?

21 A After I arrived at the apartment, Cookie took me
22 to her bedroom and showed me the broken window and the
23 dented screen, from where the bottle had struck and broken
24 the window, and the glass at the foot of the window.

25 And the telephone rang, and it was answered in

App. 74

1 the other room. And Cookie and her mother said to me to
2 pick up the phone, because he was calling again.

3 And I picked up the phone, and I heard him say
4 something to the effect that "Next time, you know, I will
5 not miss."

6 Then they went on talking for awhile, but I hung
7 up, because they said he might be outside, in a nearby
8 telephone booth, making a call from the corner. But he
9 wasn't.

10 Q Did you ask either Mrs. Marshall or Lilly Jenkins
11 who it was that made the telephone call that you overheard?

12 A Yes, I did, and they said it was James Oliver.

13 Q Now, skipping back a moment, did you look at the
14 window in Miss Jenkins' bedroom?

15 A Yes, I did.

16 Q Did you notice whether there was a screen?

17 A There was a screen on the outside of it, and that
18 was what prevented the bottle from crashing through the
19 window and breaking up in her room. It dented the screen,
20 so that it came in far enough to break the window, and
21 then it bounced back out.

22 Q Now, did there come a time when you went outside
23 the house to look around for evidence?

24 A Yes.

25 Q And could you just tell the members of the jury

App

1 again what you saw and what you did?

2 A Okay. I went downstairs, and directly under her
3 window, on the sidewalk, I found what was left over of the
4 fire bomb. There were fragments of glass. There was the
5 cotton wadding that was sticking out the neck of the bottle,
6 like a beer bottle, and there was definitely the odor of
7 gasoline coming from it.

8 I picked it up and placed it in a plastic bag
9 and brought it to headquarters.

10 Q And to whom at headquarters did you give it?

11 A To Lieutenant Novello.

12 Q When you say you saw fragments of the beer bottle --
13 what led you to believe it was a beer bottle?

14 A It looked like one of those new, short beer bottles --
15 not the large ones. And the neck of it, it was a twist-off
16 cap one, and it had a reddish label around it. To me it
17 looked like a small beer bottle.

18 Q Were you able to identify the label?

19 A I don't know why I kept thinking it was a
20 Ballentine one, but I don't know why I said that. That is
21 why I put the label inside the vial there, in case maybe
22 the lab could determine what brand it was.

23 Q Did you feel the wadding as you picked it up?

24 A Yes, I did, and it was completely saturated with
25 gasoline.

App. 76

MR. SMITH: I have nothing further.

CROSS-EXAMINATION BY MR. STURTEVANT:

Q Officer McQueeney, what was the weather like that evening?

A It was raining.

Q Well, was it raining, if you can remember, when you went to 20 Capen Street?

A At that time, it was drizzling.

Q It was drizzling? Would you say it was a dark night? Can you remember?

A Yes, I can remember. It was a rainy night, and toward that time it was only drizzling. There were clouds in the sky, but that was it.

Q Was it dark out?

A At two o'clock in the morning? Yes.

Q It was?

A Yes.

Q Now, when you arrived, you said that you immediately went -- you entered the apartment, and went into the kitchen?

A Yes.

Q And then you were led to Cookie's bedroom?

A Yes.

Q Upon arriving, what did either Cookie or her mother or her brother tell you?

A Cookie explained that this man that she had been

Am. 76(a)

1 Q Did you have an opportunity, personally, to
2 determine the distance from her house to the playground
3 that has been mentioned in this case?

4 A Yes.

5 Q How did you measure it?

6 A I paced off the distance.

7 Q What distance did you find from the edge of their
8 building to the edge of the playground?

9 MR. SMITH: Your Honor, I object. If it is
10 in paces or feet, or what?

11 MR. STURTEVANT: We'll clear that up.

12 Q Did you do it in feet?

13 A Yes.

14 Q How did you do it? How did you determine how
15 many feet?

16 A Well, in the past, I have checked my pace over a
17 prescribed course of 100 yards, and it averages out to
18 approximately 33 and a third paces, per 100 yards. That
19 is for 300 feet.

20 Q How many paces did you take from the edge of the
21 house -- was it from the edge of the house that you began?
22 Explain to the ladies and gentlemen of the jury the course
23 you took in measuring it.

24 A I took the most direct route from the house,
25 across the vacant lot, which is adjacent to the house and

App. 77

1 to the playground, which is the direction that the
2 perpetrator was to have taken.

3 Q What side of the house did you start on? Was it
4 the north side?

5 A I can't give you the direction.

6 Q Would this have been the area in which the kitchen
7 window would look out onto --

8 A Yes.

9 Q What is the distance, as best you could determine,
10 from the edge of the house to the playground?

11 A It was 192 yards.

12 Q Did you also pace off the distance from the
13 edge of the house to the basketball court?

14 A No. I beg your pardon, I gave you the wrong
15 information. That was the total distance, from the house
16 to the edge of the basketball court, it was 192 yards.

17 Q All right, Mr. Porter, what was the distance from
18 the edge of the house to the beginning of the playground?

19 A 307 feet.

20 Q Approximately 100 yards?

21 A About a hundred yards.

22 Q And this playground is on the other side of
23 North Main Street, is that correct?

24 A Yes.

25 MR. STURTEVANT: I have nothing further,

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Identification:

One of the most important issues in this case is the identification of the defendant as the perpetrator of the crime. The government has the burden of providing identity, beyond a reasonable doubt. It is not essential that the witness himself be free from doubt as to the correctness of his statement. However, you the jury, must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may convict him. If you are not convinced beyond a reasonable doubt that the defendant was the person who committed the crime, you must find the defendant not guilty.

Identification testimony is an expression of belief or impression by the witness. Its value depends on the opportunity the witness had to observe the offender at the time of the offense and to make a reliable identification later.

In appraising the identification testimony of a witness, you should consider the following:

1. Are you convinced that the witness had the capacity and an adequate opportunity to observe the offender?

Whether the witness had an adequate opportunity to observe the offender at the time of the offense will be affected by such matters as how long or short a time was available, how far or close the witness was, how good were lighting conditions, whether the witness had had occasion to see or know the person in the past.

2. Are you satisfied that the identification made by the witness subsequent to the offense was the product of his own recollection or were other factors at work? You may take into account both the strength of the identification, and the circumstances under which the identification was made.

If the identification by the witness may

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have been influenced by the circumstances under which the defendant was presented to him for identification, you should scrutinize the identification with great care. You may also consider the length of time that lapsed between the occurrence of the crime and the next opportunity of the witness to see defendant, as a factor bearing on the reliability of the identification.

3. Finally, you must consider the credibility of each identification witness in the same way as any other witness, consider whether he is truthful, and consider whether he had the capacity and opportunity to make a reliable observation on the matter covered in his testimony.

I again emphasize that the burden of proof on the prosecutor extends to every element of the crime charged, and this specifically includes the burden of proving beyond a reasonable doubt the identity of the defendant as the perpetrator of the crime with which he stands charged. If after examining the testimony, you have a reasonable doubt as to the accuracy of the identification, you must find the defendant not guilty. United States v. Telfaire, 469 F.2d 552, 558 (D.C. Cir. 1972).

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Eyewitness Identification:

There is no question that identification testimony is notably fallible, and the result of it can be, and sometimes has been the greatest single injustice that can arise out of our system of criminal law, namely the conviction of the wrong man through a mistake in identity. The dangers in this area have been well chronicled, and have been the proper subject of careful attention in this and many other courts and by members of the legal profession. Gregory v. United States, 125 U.S. App. D.C. 140, 369 F.2d 185, 190 (D.C. Cir. 1966), cert. denied 396 U.S. 865, 90 S.Ct. 143, 24 L.Ed. 2d 119 (1969); United States v. Evans, 484 F.2d 1178, 1187 (2d Cir. 1973).

Identification evidence is peculiarly riddled with innumerable dangers and variable factors which might seriously, even crucially, derogate from a fair trial.

The vagaries of eyewitness identification are well known; the annals of criminal law are rife with instances of mistaken identification.

Apart from "the dangers inherent in eyewitness identification," such as unreliable memory or perception, "[a] major factor contributing to the high incidence of miscarriage of justice from mistaken identification has been the degree of suggestion inherent in the manner in which the prosecution presents the suspect to witnesses for pretrial identification." The dangers of suggestion are not necessarily due to "police procedure intentionally designed to prejudice an accused." On the contrary, suggestion can be created intentionally or unintentionally in many subtle ways. United States v. Charles J. Ash, Jr., 461 F.2d 92 (D.C. Cir. 1972) (en banc), rev'd, 413 U.S. 300 (1973).

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Credibility of Witnesses:

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which he has testified, and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves. Devitt and Blackmar, Federal Jury Practice and Instructions, Second Edition, vol. 1, pp. 252-253.

1 The remainder of the first element, as well
2 as the entire second and third elements of the
3 offense charged in the Third Count are exactly
4 the same as those in the Second Count. Therefore,
5 I would not review them; it would be repetitious.

6 One of the most important overall issues in
7 this case is the identification of the Defendant
8 as the perpetrator of the crimes charged. The
9 Government has the burden of proving identity
10 beyond a reasonable doubt. It is not essential
11 that the witness himself be free from doubt as to
12 the correctness of his statement. However, you,
13 the jury, must be satisfied beyond a reasonable
14 doubt of the accuracy of the identification of
15 the Defendant before you may convict him. If you
16 are not convinced beyond a reasonable doubt that
17 the Defendant was the person who committed the
18 crime, then you must, of course, find the Defendant
19 not guilty.

20 Identification testimony is an expression of
21 belief or impression by the witness. Its value
22 depends on the opportunity the witness had to
23 observe the offender at the time of the offense,
24 and to make a reliable identification later.

25 In appraising the identification testimony

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1 of a witness, you should consider: Are you
2 convinced that the witness had the capacity and
3 an adequate opportunity to observe the offender?

4 Whether the witness had an adequate opportunity
5 to observe the offender at the time of the
6 offense would be affected by such matters as how
7 long or short a time was available; how far or
8 close the witness was; how good were lighting
9 conditions; whether the witness had occasion to
10 see or know the person in the past.

11 Second, are you satisfied that the identifica-
12 tion made by the witness subsequent to the
13 offense was the product of his or her own
14 recollection, or were other factors at work?
15 You may take into account the strength of the
16 identification, and all the surrounding circum-
17 stances that occurred that night under which the
18 identification was made.

19 You, as jurors, are the sole judges of the
20 credibility of the witnesses and the weight
21 their testimony deserves.

22 You should carefully scrutinize the testimony
23 given, the circumstances under which each witness
24 has testified, and every matter in evidence which
25 tends to indicate whether the witness is worthy

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of belief.

Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on the witness stand. Consider also any relation which each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience in our everyday lives.

So, in weighing the effect of a discrepancy, consider whether it pertains to a matter of importance, or an unimportant detail, and whether the discrepancy results from innocent error or willful falsehood.

All evidence of a witness whose self-interest or attitude is shown to be such as might tend to prompt testimony unfavorable to the accused,

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1 should be considered with caution and weighed
2 with great care.

3 A witness may be discredited or impeached
4 by contradictory evidence, or by evidence that at
5 other times the witness has made statements which
6 are inconsistent with the witness' present testi-
7 mony.

8 If you believe any witness has been impeached,
9 and thus discredited, it is your exclusive
10 province to give the testimony of that witness
11 such credibility, if any, as you may think it
12 deserves.

13 If a witness is shown knowingly to have
14 testified falsely concerning any material matter,
15 you have a right to distrust that witness'
16 testimony in other respects. And you may reject
17 all the testimony of that witness, or give it
18 such credibility as you may think it deserves.

19 The rules of evidence ordinarily do not per-
20 mit witnesses to testify as to opinions or con-
21 clusions. But, an exception to this rule exists
22 as to those whom we call "expert witnesses".
23 Witnesses who, by education and experience, have
24 become expert in some art, science, profession or
25 calling, may state an opinion as to relevant and

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CERTIFICATION

This is to certify that a copy of the foregoing Appendix was mailed, postage prepaid, to Thomas P. Smith, Esq., Assistant United States Attorney, 450 Main Street, Hartford, Connecticut 06103, and to Mr. James Purcell Oliver, Federal Correctional Institution, Danbury, Connecticut 06810, this 6 day of November, 1975.

Charles N. Sturtevant
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